Regulatory Policy Boosts Economic Competitiveness and Environmental Sustainability

The most important recent changes in regulations and their enforcement are aimed at improving the competitiveness of the economy and allowing development while improving or sustaining the quality of natural amenities and the environment.

Regulatory changes that receive attention here include those involving the economic competitiveness of transportation, telecommunications, and other industries critical to rural development. Also covered in some detail here are environmental and natural resource regulations, which are important for sustaining development in rural areas that rely on a clean environment and pristine natural amenities to attract development. This article also covers regulations touching some other issues, such as truck safety, welfare reform, and local government accounting requirements. Two of the most important regulatory changes involving economic competitiveness—the financial overhaul legislation and trade liberalization agreements—are covered elsewhere in this issue.

The Telecommunications Service Market Continues To Evolve

The first barriers to the Bell Companies providing long-distance service came down this past year when the Federal Communications Commission (FCC) granted a regional Bell, Bell Atlantic, permission to offer New York residents the company's long-distance service. The decision is not without controversy. The Justice Department had recommended postponing Bell Atlantic's entry into long-distance phone service. In receiving permission, Bell Atlantic agreed on further steps to open its local phone service to competition that the FCC believed would address, at least in part, the concerns of the Justice Department. AT&T and other long-distance providers also objected to the FCC decision, stating that Bell Atlantic had not gone far enough to allow them to compete in providing local phone service. What competition exists for local phone markets in New York has centered largely in New York City.

The next battle over local phone access will be in Texas where SBC has petitioned the FCC to judge their local phone markets open to competition and allow SBC to enter the long-distance market. The Justice Department has recommended against SBC, with more reservations than had been raised in the Bell Atlantic case. Congress may also attempt this year to allow the regional Bells access to the long-distance data market without the blessing of the FCC. As of this writing, a House bill to such effect had 144 cosponsors.

The debate over cable access shifts with the proposed merger of America Online (AOL) and Time Warner, Inc. Cable television's fiber optic pipelines can, with significant investment, be used for voice communication and very fast Internet service (approximately 100 times faster than current standard phone access) in addition to the traditional television fare. Cable television is viewed as a viable potential competitor to traditional phone companies in both voice and data (such as Internet) communication. The Telecommunications Act of 1996 left control of access in the hands of cable television companies. AOL, along with the regional Bells (US West, etc.) and MCI WorldCom, have been arguing for open access. AT&T and Time Warner, the country's two biggest cable providers, and other cable network owners argue against open access. AT&T wants to provide local phone service through its cable network. MCI WorldCom and the regional Bells want access so that they also can provide voice and data services through the networks.

The open-access proponents argue that since the law requires (eventual) access to local telephone company networks, the law should also require access by competitors to cable television networks. AT&T and Time Warner have argued that by opening up the networks too soon, no competition will develop because no one will be able to recoup their investments. With the purchase of Time Warner by AOL, the proponents of no access are increasingly likely to prevail in a fight that had shifted to Capitol Hill and local communities. Nevertheless, at the time of this writing, a bill in the House that would force AT&T and other cable television companies to open their networks to competing Internet providers had 28 cosponsors.

The debate over federally backed loans to expand rural television service was rejoined by the Senate Banking, Housing, and Urban Affairs Committee at the start of the new session. Under consideration is a $1.25 billion loan guarantee program aimed at delivering local stations' signals to outlying areas. The issue is sensitive because residents in sparsely populated regions often cannot receive broadcast signals from the nearest metropolitan area. Cable systems are required to rebroadcast, but often do not serve sparsely populated areas because of the cost of extending fiber optic lines. Direct-broadcast satellite services have recently acquired the right to rebroadcast, but argue that they need a bigger chunk of broadcast spectrum in order to rebroadcast local channels from small metropolitan areas. Satellite service providers argue that they are the most economically efficient operators to provide rebroadcast of local stations. Cable operators argue that any loan program favoring satellites would be discriminatory. They want government-backed loans to expand and improve their facilities in rural areas. The bill is expected to be forwarded out of committee before June. *[Peter Stenberg, 202-694-5366, stenberg@ers.usda.gov]*

Transportation Safety and Competitiveness Are Chief Concerns

The Motor Carrier Safety Improvement Act of 1999 (P.L. 106-159) places truck and bus safety issues within a newly formed Federal Motor Carrier Safety Administration. This agency, modeled after the Federal Aviation Administration, concentrates on improving safety in the trucking industry by reducing the number and severity of crashes involving large trucks. The new agency seeks to improve safety through more commercial motor vehicle and driver inspections and carrier compliance reviews, stronger enforcement activities, expedited completion of motor carrier rules, greater research into safety issues, and improved testing and recordkeeping of commercial driver's license holders. The law also provides for expanded sanctions against unsafe drivers and carriers, including the authority to revoke licenses of unsafe operators.

Safety remains a critical concern for the trucking industry. According to recent U.S. Department of Transportation estimates, more than 329,000 accidents involve motor vehicles and large trucks annually, resulting in more than 5,000 deaths. In recent years, safety concerns have heightened with passage of the North American Free Trade Agreement (NAFTA), which allows trucks from Canada and Mexico greater access to roads throughout the Nation, although most trucks from Mexico are currently prohibited from going beyond an 8-mile zone along the U.S./Mexico border.

Regulatory scrutiny of railroads has also increased as the railroad industry continues to consolidate (fig.1). In December 1999, Burlington Northern Santa Fe (BNSF), itself the product of a 1995 merger, proposed to merge with Canadian National Railway. If approved by Canadian authorities and the U.S. Surface Transportation Board (STB), the new railroad would be the largest in North America. This proposal, which comes amid a flurry of merger activity in the railroad industry, faces opposition from a variety of groups, including chemical manufacturers and individuals in western Canada who fear that rail competition will suffer.

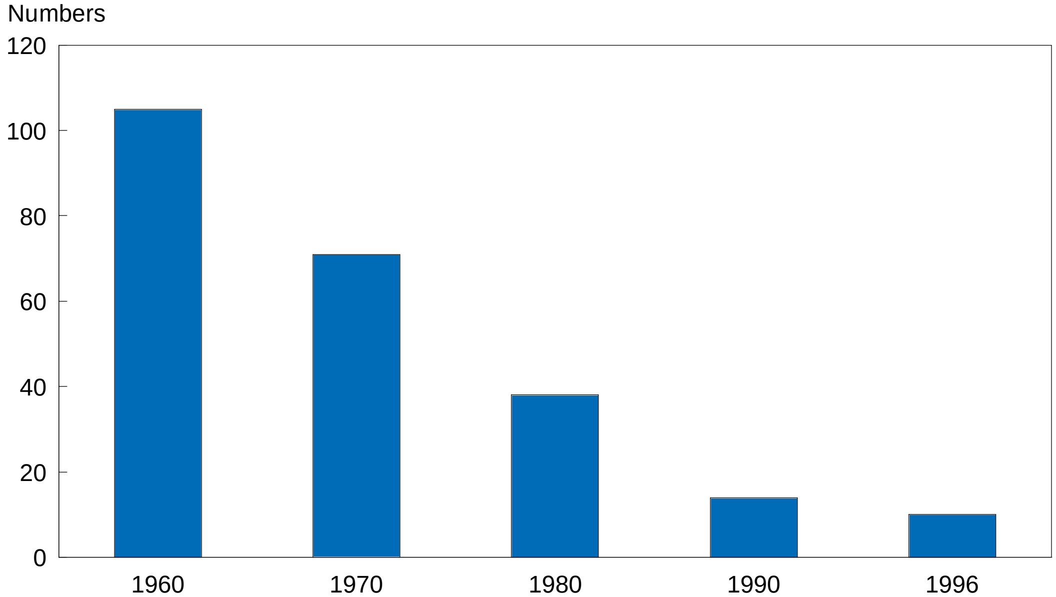
In March 2000, the STB announced a 15-month moratorium on this and other major railroad mergers while it examines the situation and develops new merger rules. Although the long-term economic effects of consolidations in the rail freight industry remain unclear, disruptions of rail service due to railroad consolidations trouble agriculture and other rail-dependent industries as many bulk commodities and manufactured goods are moved by rail. Some have argued that the merger would trigger further consolidations in the rail industry, which may reduce competition in the shipment of bulk commodities, such as grain.

Railroads have also recently started to increase rates for hauling freight. Citing increases in the price of oil, a surging economy, shortages in track and equipment, and recent increases in trucking shipping rates, some of the Nation's largest railroads have raised freight rates as much as 4 percent this year, more than double the annual rate of increase

Figure 1

Number of major (Class I) freight railroads in the U.S., 1960-96

The number of railroads has decreased sharply since the early 1960's



Source: U.S. Department of Transportation.

in recent years. Some major shippers argue that service-related problems arising from recent merger activity should be given priority before rates are raised.

Rural air service has also come under increased regulatory scrutiny as airline competition has become an important issue. In 1999, the Department of Justice (DOJ) filed an antitrust lawsuit against American Airlines, the Nation's second largest airline, for allegedly monopolizing and attempting to monopolize airline passenger service to and from Dallas/Ft. Worth. The lawsuit charges that American sought to drive small, startup airlines, which are important in many rural areas, out of the Dallas/Ft. Worth airport, the Nation's third largest, by saturating their routes with additional flights and cutting fares and then reestablishing higher fares and reduced service once the low-cost carrier had left the market. If DOJ wins the case, air fares may fall as other low-cost carriers re-enter the Dallas/Ft. Worth market. This might also discourage other airlines considering anti-competitive practices that are potentially harmful to rural areas. *[Dennis Brown, 202-694-5338, dennisb@ers.usda.gov]*

Maintaining Competitiveness in Other Major Industries

In the last year, the Federal Government has taken or considered antitrust action to prevent several major industries from becoming too concentrated to be competitive. The most celebrated case involved Microsoft Corporation's dominance of the computer software industry. In November 1999, a judge of the U.S. District Court agreed with the Justice Department, ruling that Microsoft exercised monopoly power that hurt consumers and competitors. After Microsoft and the Justice Department failed to settle the case out of court, the Court ruled in the Spring of 2000 that Microsoft was in violation of antitrust law. As of this writing, the court's penalty for Microsoft is still to be decided, however, this represents an important move toward maintaining a competitive economy at a time when the economy is increasingly computer-based. It may also be particularly important to rural areas that are looking to computer- and telecommunications-based economic development.

Another court case involves the proposed merger of two large oil companies, British Petroleum Amoco and the Atlantic Richfield Corporation. In February 2000, the Federal

Trade Commission (FTC) was joined by the States of California, Washington, and Oregon in arguing against this merger before a Federal court. The FTC argued that this merger would give the new company effective control of the entire Alaskan oil production, which would allow it to charge monopoly prices in the Western region. Moreover, the FTC claimed that there is little other reason for the merger, since it would appear to produce no economic efficiencies. The outcome of this case could be significant for future antitrust cases, since the same FTC arguments might be applicable to other mergers in highly concentrated industries.

This point was underscored on February 17, 2000, when FTC Chairman Robert Pitofsky formally announced a toughening of the FTC approval process for mergers of companies that are direct competitors. With the annual number of mergers more than doubling since 1993, the FTC sees this policy change as necessary to assure the public that competition will not be sacrificed. The FTC previously penalized some companies for allegedly sabotaging the assets they planned to divest; the new FTC policy aims to prevent these anti-competitive practices from occurring in the first place. Under the new FTC guidelines, prior to approving mergers, the FTC will examine the supposed buyers of divested assets (businesses) to ensure that they can remain a viable source of competition in the industry after the merger.

Farm Credit Administration Focuses on Mission, Competitiveness Issues

In January 1999, the Farm Credit Administration (FCA)—the independent Federal agency that regulates the Farm Credit System (FCS)—issued new reporting requirements for FCS lenders on lending to young, beginning, and small (YBS) borrowers. Eligible borrowers include farmers, ranchers and producers or harvesters of aquatic products. The FCA changed its definitions of young, beginning, and small to be more consistent with those used by USDA and the National Commission on Small Farms. Young borrowers are not more than 35 years old. Small borrowers generate less than $250,000 in annual gross agricultural or aquatic sales. And beginning borrowers have not more than 10 years of relevant experience. FCS lenders must complete a questionnaire on their business activities with respect to YBS borrowers. FCA has also designated YBS activities as a special examination focus, and examiners will assess each institution’s program for furnishing sound credit and related services to these borrowers patterned after Community Reinvestment Act (CRA) exams conducted by commercial bank and thrift regulators.

In July 1998, the FCA’s board of directors adopted a philosophy statement on intrasystem competition that could lead to substantial changes in FCS structure and operations. In November 1998, the FCA published a proposed rule to allow eligible borrowers to obtain credit and financial services from FCS lenders of their choice regardless of the location of their residence or agricultural activity—effectively eliminating territorial restrictions on FCS lenders. After an extended comment period that exposed a deep division among FCS institutions and strong opposition from commercial banks, the FCA board decided instead to use its existing authority to grant national charters to FCS direct lender associations to remove geographic restrictions. The FCA is also considering allowing Production Credit Associations (which specialize in nonreal estate lending) and Federal Land Credit Associations (which specialize in real estate lending) to convert to Agricultural Credit Associations (which can make both real estate and nonreal estate loans) without merging with an existing association. These initiatives offer the potential of lowering the cost of credit and improving service for customers through enhanced competition, while allowing FCS lending associations greater risk management opportunities through geographic and product diversification.

EPA Acts To Improve Air Quality. . .

In April 1999, the Environmental Protection Agency (EPA) issued the final regional haze regulation to improve air quality in 156 national parks and wilderness areas across the country. (More than 80 of these areas are managed by the USDA Forest Service.) The program provides a framework by which States will work together to develop visibility improvement goals for each area and emission reduction strategies to meet these goals.

State plans must address certain large emission facilities, but they can also include other types of pollution sources, such as cars, trucks, and smaller "area" sources. State plans are due in the 2003-2008 timeframe. By implementing regional haze and other air quality strategies, the States are expected to improve air quality not just in parks and wilderness areas, but across broad regions of the country. These air quality improvements should benefit the health and well-being of rural communities, including those whose economies rely on park tourism, and enhance the experience of the more than 60 million visitors to these national parks and wilderness areas each year.

In November 1999, EPA sued seven of the Nation's large utility companies for illegally polluting the air. EPA claimed that 32 coal-fired plants—plants that had been exempt from the Clean Air Act's major new source review permitting requirements because of when they were built—had illegally upgraded without adding the required pollution controls. The affected plants are located in Alabama, Georgia, Illinois, Indiana, Kentucky, Mississippi, Ohio, Tennessee, and West Virginia. However, their pollution affects a broad area of the country, particularly the Eastern United States. EPA also filed an administrative order against the Tennessee Valley Authority for similar infractions.

In March 2000, a Federal appeals court ruled that EPA could go ahead with its rule to require 22 States (mostly in the East and Midwest) to reduce nitrogen oxide levels—a pollutant that contributes to smog. EPA finalized these rules in 1998, but they were in litigation until March 2000 when the DC Circuit of the Appeals Court upheld EPA's statutory authority to make the rule change. In another effort to reduce regional air pollution, in November 1999, EPA responded to petitions from States to reduce air pollution from upwind States by requiring some 392 utilities and other facilities to reduce their emissions of smog-forming chemicals. As part of the rule, EPA finalized a new emissions trading system, similar to that used with acid rain, easing the financial burdens on some firms that would otherwise have difficulty meeting the smog requirements.

In October 1999, the President announced more restrictive rules for environmental reporting by firms handling relatively small amounts of certain toxic materials, including dioxin. Under the previous rules, firms could handle up to 25,000 pounds or use up to 10,000 pounds of the toxic chemicals annually without having to report their discharges. Most of the thresholds were lowered to 100 pounds, or lower, depending on the toxicity of the chemical. The rule covers air pollution from incinerators as well as other forms of pollution involving toxic chemicals. This provides communities with better information about the environmental hazards associated with local industry and provides industry with an incentive to reduce the use of these toxic chemicals. It should particularly benefit communities with significant industrial activity. *[Rick Reeder, 202-694-5360, rreeder@ers.usda.gov]*

. . . and Water Quality

Since the passage of the Clean Water Act over a quarter century ago, great progress has been made, but about 40 percent of the American waterways—which include more than 20,000 rivers, lakes, and estuaries—still are not fit for fishing and swimming. Many of these polluted water bodies identified by States are highly valued fisheries. An overwhelming majority of Americans—218 million—still live within 10 miles of a polluted water body. Further improvements in water quality will be more demanding, because pollutants do not come just through pipes—point sources. Actually, point pollution discharges account for only about 10 percent of polluted waters, while the remaining 90 percent are caused by polluted runoff from farms, feedlots, forestry operations, construction sites, urban streets, and suburban lawns.

In August 1999, EPA proposed to revise procedures for the Total Maximum Daily Load (TMDL) program, the National Pollutant Discharge Elimination System (NPDES), and the Water Quality Standards (WQS) Program in an effort to speed up the cleaning of American waterways. A TMDL is a "pollution-budget" for an impaired water body. It sets limits on the amount of pollutants that a water body can receive without violating water quality standards adopted by States. Under section 303(d) of the Clean Water Act, States, territories, and authorized tribes are responsible for developing lists of priority projects based on TMDL's of their impaired or threatened water bodies. Public participation will be required in the choice of methodology for identifying the impaired water bodies and priorities. The proposed changes provide clear direction and promote consistency across States, territories, and authorized tribes in developing priority lists and schedules. Lists must classify high-, medium-, and low-priority water bodies according to the severity of the pollution and the uses of the water body.

While States will have considerable flexibility in determining how to allocate those needed reductions in the identified pollution loads, they must give "reasonable assurances" in their implementation plans that on-the-ground actions will actually occur. Lists must also contain schedules for establishing TMDL's for each water body within 15 years. High priority is to be given to sources of drinking water or waters that sustain endangered species; for these, TMDL's must be established within 5 years. EPA will establish TMDL's if the body of water involves interstate or boundary waters, if a State asks EPA for help, or if EPA determines that the State lacks the will to complete the task.

A recent landmark decision in a Federal court upheld EPA's authority to regulate and designate certain sources of polluted runoff as point sources if critical for meeting water quality standards. Instead of individual water bodies, the entire watershed will be the focus of this new approach.

In the Great Lakes region, lakeside rural communities are already benefiting from EPA-supported regional approaches to reduce pollution in the Great Lakes, and recent EPA proposals promise further improvements. In 1995, EPA and the Great Lakes States agreed to water quality standards that would substantially reduce amounts of 29 pollutants, including bioaccumulative chemicals, and end the so-called mixing zones. Mixing zones are areas in the lakes where these chemicals mix with lake water and dilute to safe levels before leaving the mixing zones. Iron and steel plants, which according to the environmentalists, are some of the larger contributors of bioaccumulative chemical pollutants in the Great Lakes, challenged the 1995 water quality standards in Federal court. In 1997, the U.S Court of Appeals in the District of Columbia upheld most of the provisions of the 1995 water quality standards agreement, but it sent the mixing zone prohibition back to the EPA for further review so that it would not be too costly for industries to comply.

In September 1999, EPA proposed to sharply reduce the levels of bioaccumulative toxic chemicals—such as mercury, polychlorinated biphenyls (PCB's), dioxin, chlordane, DDT, and mirex—in the Great Lakes. After review, EPA concluded that the assumption behind the mixing zone policy—that toxic chemicals dilute to safe levels before leaving the mixing zone—is unsound. The Governors of Indiana, Minnesota, and Wisconsin have already eliminated the mixing zones in their States. EPA's new proposal will prohibit dumping of chemicals in the mixing zones in the remainder of the Great Lakes States—Illinois, New York, Ohio, and Pennsylvania. It also aims to reduce the discharge of mercury through outfall pipes by 90 percent. If ratified, these proposed regulations would eliminate new discharges of the listed chemicals into mixing zones, and phase out the existing mixing zones over the next 10 years. *[Faqir Bagi, 202-694-5337, fsbagi@ers.usda.gov]*

Efforts To Control Public Land Use and Natural Resources

Rules embedded in the omnibus funding bill, P.L. 106-113, covering the Interior Department will help clarify how Federal lands can be mined and grazed. For example, it may become more difficult for some large mines to begin operations on Federal lands following a 1997 Interior decision to enforce language in the General Mining Law of 1872 that restricts the size of mill sites to no more than 5 acres for every 20 acres that are mined. This old provision limiting the potential environmental damage arising from some types of mining (such as strip mines) only took concrete form in March 1999 when the Department blocked a permit for a proposed gold mine on public land. To allay fears that the rule might shut down many existing mines, P.L. 106-113 made it applicable only to mine applications submitted after the 1997 Interior ruling.

The same legislation contained provisions that extended, for the second year in a row, the moratorium on applying a new formula for determining royalties received from oil and gas obtained from Federal lands. The latest extension prevented the formula from taking effect until March 15, 2000. The new formula would add over $66 million per year for natural resource spending by Federal, State, and local governments.

The omnibus legislation also allows expiring grazing permits to continue to be automatically renewed for the standard 10-year period. Interior had wanted to restrict renewed permits to 1 year while waiting for environmental impact studies to be completed. The new law allows Interior to cancel or change grazing permits upon renewal, but only if such changes are deemed appropriate following the completion of environmental impact studies.

On September 30, 1999, USDA Secretary Glickman proposed new rules for managing the National Forests, moving from bureaucratic approaches toward a more inclusive, dynamic, science-based, problem-solving approach. The new forest plans will (1) involve the public earlier; (2) ensure that the environment is protected while fulfilling national economic, social, and leisure needs; (3) heighten the use of science in planning and project decisions; and (4) make forest planning responsive to new information and opportunities.

On October 13, 1999, President Clinton announced a Forest Service proposal to permanently protect at least 40 million acres, or two-thirds, of roadless National Forest lands. Future roadbuilding would be prohibited in protected areas, and logging and mining might also be prohibited. Although most States have some National Forest land, among the States most affected are Alaska, Idaho, Oregon, Montana, and California.

In March 2000, the Army Corps of Engineers proposed to change its rules to protect more of the Nation's wetlands. The Corps would preclude most construction projects from qualifying for the Nationwide Permit 26 if they involve more than one-half acre. Permit 26 allows small areas of wetlands (up to 3 acres) to be developed without the careful scrutiny of project-specific permits. The proposed change should therefore make it more difficult to develop wetlands *[Rick Reeder, 202-694-5360, rreeder@ers.usda.gov]*

Other Changes of Note

The Department of Housing and Urban Development (HUD) proposed new rules in March 2000 that would require two important housing agencies—Fannie Mae and Freddie Mac—to be more active in providing a secondary market for loans to minority groups, such as African Americans and Hispanics. The new rule would require half or more of each agency's loan purchases to be for low-to-moderate income families. The new rules follow a HUD examination of how the two agencies, which provide a secondary market for home mortgages, assess credit for members of various minority groups.

In April 1999, President Clinton announced a new regulation giving States additional flexibility in their efforts to move people from welfare to work. The new regulations give States more discretion to use Federal money for child care, transportation, and job retention services.

In May 1999, the Supreme Court ruled that States should not pay higher welfare benefits to long-time residents than to newly arrived residents. The ruling concerned a California law that limited benefits for newcomers, but it applies to similar approaches used in 14 other States. This ruling should help welfare residents that move to work in other States but end up on welfare. ERS research has shown that many of the rural poor migrate from place to place, and hence many may benefit from the new rule.

In June 1999, the Government Accounting Standards Board (GASB) set a new rule that may require many cities to disclose for the first time in their annual reports the full cost of their infrastructure and service provision. The new rule applies only where States require municipalities to comply with GASB rules. It also applies only to municipalities spending more than $10 million per year, so many small towns in rural areas may be exempt. *[Rick Reeder, 202-694-5360, rreeder@ers.usda.gov]*